UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,072	03/06/2002	Wayne H. Rothschild	47079-00125USPT	8523

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EXAMINER
HOEL, MATTHEW D

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| *Advisory Action*
Before the Filing of an Appeal Brief | Application No.
10/092,072 | Applicant(s)
ROTHSCHILD, WAYNE H. |
| | Examiner
Matthew D. Hoel | Art Unit
3714 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>24 June 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Peter D. Vo/
Supervisory Patent Examiner, Art Unit 3714

/M. D. H./
Examiner, Art Unit 3714

Continuation of 11. does NOT place the application in condition for allowance because: The real issue, as the examiner sees it, is a lack of an interaction or nexus between the conducting of the first wagering games via the player-operated gaming machine, wherein the audiovisual content for the first of the wagering games is presented at the gaming machine, and the conducting of the second of the wagering games via the player-operated computing device by generating a random event for the second of the wagering games at the central server system. How do these two games interact? Why are they in the same claim? Why is an award for only the first wagering game in the event of a winning outcome cited in the independent claims, and not a corresponding award for the second wagering game? These two wagering games should be in separate claims and then restricted. The examiner believes the last action was properly made final as the applicants changed the scope of what they believed was the invention by changing the scope of all the independent claims (MPEP 706.07(a)). The examiner did not anticipate this amendment. Cannon ('378) no longer read on the claims as then-amended. The examiner believed '866 and '709 (the new secondary reference) better read on the claims as most recently amended. The examiner quotes from Para. 28 of Harkham ('866):

"FIG. 2 is a diagram showing one embodiment of users connecting to a hotel game center. A user connects from the client device 102 to an Internet front end server 202. In one embodiment, the Internet front end server 202 is maintained or monitored by a government agency to ensure fairness. The Internet front end server 202 verifies the user and connects the user to the hotel central server 204, which is connected to a game table server 206 and a slot machine server 208. In another embodiment, the Internet front end server 202 uses an additional verification server connected to a third party such as a financial institution to verify the user. The user can then choose to play a table game such as Black Jack, Caribbean Studs, Roulette, and so forth, or play a slot machine. The game table server 206 facilitates the remote playing of the table games. The slot machine server 208 facilitates the remote playing of the slot machine games. In another embodiment, the user can also choose to play other types of games, for example trivia games such as Jeopardy, Who Wants to be a Millionaire, and so forth, board games such as Chess and Monopoly, computer games and wagering on future outcomes such as sporting events. The hotel central server 204 also connects to hotel rooms 210 and restaurants and bars 212. Hotel patrons can access the hotel central server 204 to play table games or slot machines from their hotel rooms, using devices connected to the hotel central server 204, such as televisions with remote controls, video game appliances, or custom gaming devices. Patrons at restaurants and bars 212 can also access the hotel central server 204 to play table games or slot machines, using devices connected to the hotel central server 204, such as televisions, video game appliances, or custom gaming devices."

The player as described above has a choice between playing a table game via the card game server or a slot machine. Either of these games is an example of a wagering game played by the player via a player-controlled computing device remote from any land-based casino. Para. 63 of '866 describes how the player has the option of remotely playing slot machines according to instructions received from the remote player or the player can play a virtual slot machine, based on statistics from a slot machine server that simulates slot machines. Fig. 1A of Karmarkar ('709, 6:23-44) describes how the remote video feed can be used for plural types of games including roulette, a table card game, or a table craps game. These games can include slots (9:38-45), so it would have been well within the motivation of one or ordinary skill in the art at the time of invention with every expectation of success to apply the teachings of '709 to supply live video ('709, Fig. 1, 6:8-22) for the player-operated remote slot machines of '866 (15:7-23) or randomly selected pre-recorded video ('709, 170 & 172, Fig. 2, 11:47-51) in the case of the slot servers of '866 (15:7-23). This would provide a more realistic depiction of the remote slot game play rather than providing only statistics for either live-remote operated or server-simulated slot machines. A further review of the applicants' specification (2003/0171149 A1) does not provide much insight into what a patentable point of novelty might be. The applicants merely state in Paras. 7 and 31 that the basic version of the audiovisual content is executed in JavaScript or some other language. The applicants do not specify what format the upgraded audiovisual content is executed in. The examiner believes '709, relied on as a secondary reference provides computer-generated imaged and animation data regarding the random event, as '709 conducts significant video processing with the acquired footage. See Fig. 1B: 90, real time content edit processing array; 92, real-time multimedia content compression processing array; 94, real time multimedia encryption processing array; and 96, secure compressed virtual gaming episode database (6:45-7:8). The audiovisual content of '709 includes both audio and video (20:52-67), and significant computer-generated content representing the content of a live game (synthetic cards used to represent status of live card game to reduce bandwidth, among other uses, 13:1-30; this technique can also be used for the pre-recorded data, 13:40-48). The applicants have especially not claimed how the computer-generated audiovisual content is produced in a way that would teach away from '709. Is it generated by a graphics language such as OPEN GL? And if so, what would be the advantage in light of '709. At the very least, the applicants would have to cite how the computer-generated audiovisual content is generated in a manner that the claim language produces a non-obvious result, and also cite how the enhanced audiovisual content is better than the basic audiovisual content in a non-obvious manner. A review of the applicant's disclosure does not yield any suggestions on the part of the examiner, as these aspects are not developed in much detail. Dehmlow (5,999,187 A) and Devie (5,675,773 A) are typical applications of Open GL. Light discusses use of Open GL in 3-D animation in 6,384,820 B2. Regarding the RNG, in the event of the first wagering game at the player operated gaming machine, this is disclosed in '866 as either the slot server or the live slot game operated under player remote command will inherently have an RNG (15:7-23). In the event of live table game of '866, the random events are determined by the play at the game table (Fig. 4, 10:34-11:12). The RNG of '709 will randomly select the game to be played (A/V content to be show); these games will be randomly played with either an RNG as in '709's slots games or with random table events as in '709's table games like roulette, cards, and craps, the difference being that these games are prerecorded. Both '866 and '709 suggest enhanced audiovisual content. '866, 13:7-17, discusses transmitting only images of cards to conserve bandwidth. The enhanced audiovisual content as applied by the 103 combination with '709 as applied to the independent claims of the live or prerecorded games would thus be enhanced audiovisual content. Page 13 of '866 further discusses how large programs can be executed in memory, without requiring installation; such techniques could be used for streaming the enhanced audiovisual content to the memory of the player-operated computing device as claimed. '709, 13:1-30, has a similar discussion to page 13 of '866. '709 discusses how its application can be used for slot games (9:38-45), so it would have been obvious to one of ordinary skill in the art at the time of invention to have used it to apply the computer-generated A/V to the   slot servers or remote-operated slot games of '866 as outlined in the

office action. Regarding the applicant's use of JavaScript for computer-generating A/V, this is not done by the JavaScript alone, as JavaScript is a scripting language. It is used to invoke A/V files for this purpose, so the examiner believes there are no 112 issues on this matter. For example, Wang, et al. (6,173,406 B1, Fig. 1E, 3:56-67, 4:35-51) discuss how JavaScript is used so invoke A/V content on a web page. The examiner is unsure how to tell the applicant to proceed for allowable subject matter. There would at least need to be a nexus between the first wagering game played on the player-operated gaming machine, the second wagering game played on the player-operated computing device remote from the land-based casino, awards provided for winning events in both games and not just the first wagering game, the manner in which the computer-generated audiovisual data is generated, and the advantage of the enhanced audiovisual data as opposed to the basic audiovisual data and how the enhanced A/V data is generated. The examiner does not believe that the specification develops these individual aspects or their interactions with each other in sufficient detail to recommend allowable claim language.